



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

NP

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/384,326	08/26/1999	SEISHIRO YOSHIOKA	35.C5745-CIP	7618

5514 7590 03/21/2002

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER

DAY, MICHAEL HENRY

ART UNIT	PAPER NUMBER
2879	

DATE MAILED: 03/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/384,326	Applicant(s) Yoshioka, et al.
Examiner Michael Day	Art Unit 2879



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jan 17, 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-42, 56-67, and 69-84 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 1-42, 56-67, and 73 is/are allowed.

6) Claim(s) 69-72 and 74-84 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are objected to by the Examiner.

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. 07/218,203.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892)

16) Notice of Draftsperson's Patent Drawing Review (PTO-948)

17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

18) Interview Summary (PTO-413) Paper No(s). _____

19) Notice of Informal Patent Application (PTO-152)

20) Other: _____

Art Unit: 2879

DETAILED ACTION

1. Amendment E, and the Supplemental Reissue Declaration, filed 17 January 2002, have been entered. Amendment E overcomes the rejection of claims 1-42, and 56-67 based upon a defective reissue declaration under 35 U.S.C. 251.

Claim Objections

2. Claim 75 is objected to because of the following informalities: The word, "electron," is misspelled. Appropriate correction is required.

Recapture of Canceled Subject Matter

3. Claims 69-72, and 74-84 are rejected under 35 U.S.C. 251 as being an improper recapture of claimed subject matter deliberately canceled in the application for the patent upon which the present reissue is based. As stated in *Ball Corp. v. United States*, 221 USPQ 289, 295 (Fed. Cir. 1984):

The recapture rule bars the patentee from acquiring, through reissue, claims that are of the same or broader scope than those claims that were canceled from the original application.

4. Claims 69-72, and 74-84 are directed to devices encompassing laminate electron sources, as evidenced by the instant claim 81. The original claims 67-95 were similarly directed to devices including laminate electron sources. The original claims 67-95, however, were canceled on page

Art Unit: 2879

2, paragraph 5 of paper number 28 to obviate the rejection of the claims under the judicially created doctrine of obviousness-type double patenting as obvious over claims 1-38, and 40-49 of U.S. Patent No. 5,066,883 by Yoshioka et al. in view of U.S. Patent No. 3,735,186 by Klopfer, et al. The original claims 67-95 were canceled without prejudice or disclaimer of the subject matter to preserving the right to file a divisional application. Deliberate cancellation of claims cannot ordinarily be considered an error within the scope of the intended meaning of 35 USC 521. Accord. *In re Orita, Yahagi, and Enomoti (CCPA) 193 USPQ 145.* That is to say, reissue cannot be used to circumvent the copendency requirements of 35 USC 120, and 121.

Allowable Subject Matter

5. The instant independent claim 56, as presently amended, recite "said first and second electrodes lying in substantially a same plane that is substantially parallel to the upper surface of said substrate." The first and second electrodes cannot lie in substantially a same plane, and concurrently constitute a laminate electron sources. A laminate electron sources includes an insulating layer disposed between opposing electrodes (see FIG. 1), which is mutually exclusive of electrodes lying in substantially a same plane. Consequently, amendment D overcomes the rejection of claims 56-67 under 35 U.S.C. 251.

6. Since allowable subject matter has been indicated, applicant is encouraged to submit formal drawings in response to this Office action. The early submission of formal drawings will

Art Unit: 2879

permit the Office to review the drawings for acceptability and to resolve any informalities remaining therein before the application is passed to issue. This will avoid possible delays in the issue process.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Day whose telephone number is 703/305-4941. The examiner can normally be reached on Monday-Friday, from 8:00 A.M. to 5:00 P.M.

Art Unit: 2879

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nimeshkumar Patel, can be reached by phoning 703/305-4794. The Fax phone number is 703/308-7382.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is 703/308-0956.

March 15, 2002



MICHAEL DAY
PRIMARY EXAMINER
GROUP 2870